

MINUTES OF THE
SPECIAL MEETING – CITY COUNCIL
FEBRUARY 17, 2009

The special meeting of the City Council of the City of Benicia was called to order by Mayor Elizabeth Patterson at 6:00 p.m. on Tuesday, February 17, 2009, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

Present: Council Members Ioakimedes, Schwartzman, and Mayor Patterson

Absent: Council Members Campbell (arrived after Closed Session began) and Hughes

PLEDGE OF ALLEGIANCE:

Heather McLaughlin led the pledge to the flag.

FUNDAMENTAL RIGHTS:

A plaque stating the Fundamental Rights of each member of the public is posted at the entrance to the Council Chambers per Section 4.04.030 of City of Benicia Ordinance No. 05-6 (Open Government Ordinance).

OPPORTUNITY FOR PUBLIC COMMENT:

WRITTEN:

PUBLIC COMMENT:

None

ANNOUNCEMENT OF CLOSED SESSION:

Heather McLaughlin read the announcement of Closed Session.

CLOSED SESSION:

- A. CONFERENCE WITH LEGAL COUNSEL – INITIATION OF LITIGATION (Government Code Section §54956.9(c))/CONFERENCE WITH REAL PROPERTY NEGOTIATOR (Government Code Section §54956.8)**

CHURCH STREET/WEST 12TH ST.

Negotiating parties: City Manager, City Attorney, Public Works Director

- B. CONFERENCE WITH REAL PROPERTY NEGOTIATOR (GOVERNMENT CODE SECTION §54956.8)**

MILITARY WEST SUBDIVISION

Negotiating parties: City Manager, City Attorney, Public Works Director

C. CONFERENCE WITH LEGAL COUNSEL - PENDING LITIGATION
Significant exposure to litigation pursuant to subdivision (a) of Section
54956.9
King Solomon Church v. the City

ADJOURNMENT:

Mayor Patterson adjourned the meeting at 6:02 p.m.

Lisa Wolfe, City Clerk

MINUTES OF THE
REGULAR MEETING – CITY COUNCIL
FEBRUARY 17, 2009

The regular meeting of the City Council of the City of Benicia was called to order by Mayor Elizabeth Patterson at 7:00 p.m. on Tuesday, February 17, 2009, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

Present: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Absent: None

PLEDGE OF ALLEGIANCE:

Mayor Patterson led the pledge to the flag.

FUNDAMENTAL RIGHTS:

A plaque stating the Fundamental Rights of each member of the public is posted at the entrance to the Council Chambers per Section 4.04.030 of City of Benicia Ordinance No. 05-6 (Open Government Ordinance).

ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:

ANNOUNCEMENTS:

Action taken at Closed Session:

Ms. McLaughlin reported the following actions on Closed Session items:

- A. Council gave direction to Staff to file an action.
- B. Council gave direction to Staff.
- C. Council received information from Staff.

Openings on Boards and Commissions:

- Sky Valley Open Space Committee:
 - One unexpired term to September 30, 2010
 - One full term to January 31, 2013
- Parks, Recreation and Cemetery Commission:
 - One unexpired term to March 31, 2010

Mayor's Office Hours:

Mayor Patterson will maintain an open office every Monday (except holidays) in the Mayor's Office of City Hall from 6:00 p.m. to 7:00 p.m. No appointment is necessary. Other meeting times may be scheduled through the City Hall office at 746-4200.

APPOINTMENTS:

RESOLUTION 09-08 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF DONALD DEAN TO THE PLANNING COMMISSION TO A FULL TERM ENDING JANUARY 31, 2013

The above Resolution was adopted, on roll call by the following vote:

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor
Patterson

Noes: None

RESOLUTION 09-09 - A RESOLUTION CONFIRMING THE MAYOR'S REAPPOINTMENT OF LEE SYRACUSE TO THE PLANNING COMMISSION TO A FULL TERM ENDING JANUARY 31, 2013

The above Resolution was adopted, on roll call by the following vote:

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor
Patterson

Noes: None

RESOLUTION 09-10 A RESOLUTION CONFIRMING THE MAYOR'S REAPPOINTMENT OF RUTH WORKMAN TO THE BOARD OF LIBRARY TRUSTEES TO A FULL TERM ENDING JANUARY 31, 2012

The above Resolution was adopted, on roll call by the following vote:

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor
Patterson

Noes: None

RESOLUTION 09-11 - A RESOLUTION CONFIRMING THE MAYOR'S REAPPOINTMENT OF CAROLE NAIL TO THE BOARD OF LIBRARY TRUSTEES TO A FULL TERM ENDING JANUARY 31, 2012

The above Resolution was adopted, on roll call by the following vote:

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor
Patterson

Noes: None

RESOLUTION 09-12 - A RESOLUTION CONFIRMING THE MAYOR'S REAPPOINTMENT OF RALPH DEJESU TO THE FINANCE, AUDIT AND BUDGET COMMITTEE TO A FULL TERM ENDING JANUARY 31, 2013

The above Resolution was adopted, on roll call by the following vote:

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor
Patterson

Noes: None

RESOLUTION 09-13 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF DENNIS LOWRY TO THE FINANCE, AUDIT AND BUDGET COMMITTEE TO A FULL TERM ENDING JANUARY 31, 2013

The above Resolution was adopted, on roll call by the following vote:

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor
Patterson

Noes: None

RESOLUTION 09-14 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF LELAND WINES TO THE FINANCE, AUDIT, AND BUDGET COMMITTEE TO A FULL TERM ENDING JANUARY 31, 2011

The above Resolution was adopted, on roll call by the following vote:

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor
Patterson

Noes: None

RESOLUTION 09-15 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF CLAIRE MCFADDEN TO THE OPEN GOVERNMENT COMMISSION TO A FULL TERM ENDING JANUARY 31, 2013

The above Resolution was adopted, on roll call by the following vote:

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor
Patterson

Noes: None

PRESENTATIONS:

None

PROCLAMATIONS:

None

ADOPTION OF AGENDA:

Jim Erickson, City Manager, discussed a recent email problem the City experienced for the last day and a half. It kept the City from receiving any inbound email or sending any outbound emails. The problem should be fixed by tomorrow morning. The problem still exists at this time. Some people may have wanted to correspond with Council and Staff via email. Emails that were sent to or from City hall have not yet been received. Some citizens may wish to communicate to Council orally, and some have called and spoke with Council or Staff already. Staff expects the problem to be fixed by tomorrow morning. He apologized for the inconvenience.

Mayor Patterson asked Ms. McLaughlin about the issue of people who might have thought they were on record by sending an email. She asked if that would affect any of the decisions that would be made tonight.

Ms. McLaughlin stated that it was perfectly fine. The Open Government Ordinance has a specific provision providing for technical difficulty with emails. The City does not count the email as received until someone has actually received it. It is incumbent on people to follow up if they want to make sure their emails have been addressed.

Mr. Erickson requested item IX-B be continued. Staff is continuing to work with Valero representatives on an agreement. They hope in the next two meetings that they will be able to come back with a recommendation.

Mayor Patterson clarified that Council would take public testimony on IX-B when it came up on the agenda and then continue it to a future meeting.

On motion of Council Member Schwartzman, seconded by Council Member Hughes, the Agenda was adopted as amended, on roll call by the following vote:

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Noes: None

OPPORTUNITY FOR PUBLIC COMMENT:

WRITTEN:

Various items submitted (copies on file).

PUBLIC COMMENT:

1. Ann Hansen – Ms. Hansen announced upcoming events at the Benicia Historical Museum.
2. Paula Schwartz – Ms. Schwartz discussed concerns regarding the A-frame sign ordinance limitations. She would like Council to enact a moratorium on the sign ordinance until this issue is figured out.

Staff and Council discussed the current moratorium on the enforcement of A-frame signs on First Street, including businesses on the second floor. The moratorium was enacted because of the utility of the signs, the state of the economy, etc. The Planning Commission and EDB will be looking into this. The City should receive feedback from the Chamber of Commerce on this issue in the near future. Enforcement is limited to safety issues at this time.

Council Member Schwartzman discussed the enforcement of banners and other signs. He would like those discussed in the future.

3. Jon Van Landschoot – Mr. Van Landschoot thanked Council for appointing two planners to the Planning Commission.

CONSENT CALENDAR:

Council pulled items VII-A.

On motion of Council Member Schwartzman, seconded by Council Member Hughes, the Consent Calendar was adopted as amended, on roll call by the following vote:

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Noes: None

RESOLUTION 09-16 - A RESOLUTION ACCEPTING THE EAST 5TH STREET SMART GROWTH PROJECT AS COMPLETE, INCLUDING APPROVAL OF CHANGE ORDER NOS. 1 THROUGH 4, AUTHORIZING THE CITY MANAGER TO SIGN THE NOTICE OF COMPLETION, AND AUTHORIZING THE CITY CLERK TO FILE SAME WITH THE SOLANO COUNTY RECORDER

RESOLUTION 09-17 - A RESOLUTION VACATING A UTILITY EASEMENT AT 622-626 FIRST STREET AND AUTHORIZING THE CITY CLERK TO EXECUTE THE CITY COUNCIL CERTIFICATE ON THE FINAL PARCEL MAP ON BEHALF OF THE CITY

RESOLUTION 09-18 - A RESOLUTION FOR FUNDING FROM THE URBAN FORESTRY GRANT PROGRAM ENTITLED, "AN URBAN FOREST FOR EVERY CITY," AS PROVIDED THROUGH PROPOSITIONS 40 AND 84

Approval to waive the reading of all ordinances introduced and adopted pursuant to this agenda.

(END OF CONSENT CALENDAR)

Council took the following actions:

Approval of the Minutes of January 27, 2009 and February 3, 2009:

Mayor Patterson asked that the minutes of February 3, 2009 be amended. There was an extensive discussion about setting precedence. She would like page VII-A-7 to include that there was a concern expressed about setting a precedence and that there were mitigating and unique factors including that that the Benicia Community Arts had been in existence for 28 years and they just had a change in leadership.

On motion of Council Member Hughes, seconded by Vice Mayor Campbell, the Minutes of January 27, 2009 and February 3, 2009 were approved as amended, on roll call by the following vote:

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Noes: None

PUBLIC HEARINGS:

None

ACTION ITEMS:

Presentation of the comprehensive annual financial report for the fiscal year ending June 30, 2008 and recognition of Certificate of Achievement for Excellence in Financial Reporting for the June 30, 2007 report:

Rob Sousa, Finance Director, reviewed the Staff report.

Public Comment:

None

On motion of Council Member Schwartzman, seconded by Council Member Hughes, Council accepted the Comprehensive Annual Financial Report (CAFR) for the Fiscal Year Ending June 30, 2008, on roll call by the following vote:

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Noes: None

Update on the untreated water delivery agreement with Valero Refining Company – California:

Staff recommended this item be continued to a future meeting.

Public Comment:

None

This item was continued to a future meeting.

Mayor Patterson asked if there were any Council or public objections to hearing the Benicia Business Park item (IX-D) prior to the Campaign Disclosure Ordinance (IX-C). Item IX-D would be discussed prior to item IX-C, as there were no objections.

Benicia Business Park Application:

Jim Erickson, City Manager, introduced the item.

Charlie Knox, Community Development Director, reviewed the staff report.

Vice Mayor Campbell and Staff discussed the idea of the citizen advisory panel.

Public Comment:

1. Gene Doherty – Mr. Doherty discussed concerns regarding jobs and housing, vehicle miles traveled, money going towards primary development areas (which Benicia might not be one of), support for the project moving forward, and the need for more public discussion.
2. Marilyn Bardet – Ms. Bardet discussed the revised resolution proposed by Mr. Seeno, air monitoring at Robert Semple School, her past involvement in citizen committees, and the community advisory panel.
3. Roger Straw – Mr. Straw discussed the community advisory panel, the proposed resolution, and Staff's recommendations.

4. Steve Goetz – Mr. Goetz discussed the proposed resolution, the need to reference the letters sent to the City by the applicant in the resolution, including a statement as to why Council initially rejected the project, the need for the health risk assessment at Semple to be consistent with State law and within 200 ft., the need for a fiscal analysis, minimizing road capacity on East Second Street, including BUSD when evaluating the project, the need to protect the health and safety of the kid, and health risk assessment protocols.
5. Michael Hernandez – Mr. Hernandez discussed how unions work.
6. Roger Straw – Mr. Straw discussed concerns about the position of the project manager.

Staff discussed its vision for the project manager, and the need for the project manager to have coordination and accountability with the existing hierarchy.

7. Rosie Switzer, Governing Board President, BUSD – President Switzer discussed the letter BUSD received from Seeno (copy on file) regarding a proposed MOU. The last School Board meeting was on 2/5/09 and the next meeting is on 2/19/09. The proposed MOU is on the agenda for the Board's closed session. She discussed inconsistencies in the letter regarding BUSD's budget, the issue of reimbursement of the District's legal costs relating to the project, and a conference call that took place earlier today between the District and Seeno.

Vice Mayor Campbell asked if she was opposed to a vote without an MOU. President Switzer stated there was no MOU at this time. They can't discuss the MOU until the Board meets. Their position is the health and safety of the kids at Semple. It might be a MOU or another vehicle.

8. Jerome Page – Mr. Page discussed a conversation he had with Council Member Ioakimedes regarding the language in the proposed resolution, Benicia First's involvement in the process, concerns about the air quality at Robert Semple, the need for minor language modifications, the community advisory group, details on the project manager position, and the need to resolve the issue of an agreement for BUSD.
9. Dana Dean, Board Trustee, BUSD – Trustee Dean discussed the language in the proposed resolution regarding an agreement between BUSD and Seeno, the Board's willingness to be open to negotiations, considerations, and communications, and the District's request for Seeno to set aside funds for future mitigations.
10. Bob Craft – Mr. Craft discussed the suggested membership for the community advisory panel, the need to consider BUSD's concerns, and the position of the project manager.
11. Jon Van Landschoot – Mr. Van Landschoot discussed the membership of the citizen advisory panel, and delaying the effective date of the resolution by one month to give the developer and BUSD a chance to work out an agreement.

Mayor Patterson called for a 10-minute break at 9:04 p.m.

The meeting resumed at 9:18 p.m.

Council Members Patterson, Ioakimedes, Schwartzman, Campbell, and Hughes disclosed expartè communications.

Council Member Ioakimedes discussed conversations he had with the School District over the weekend, the need for Council to recognize that part of its role is to protect the health and welfare of the citizens, addressing BUSD's concerns through an agreement between BUSD and the applicant, and having that agreement come back to Council.

Ms. McLaughlin clarified that perhaps what Council Member Ioakimedes was trying to say was that the City would honor the commitment of the developer to enter into an agreement with BUSD to address the project impacts prior to the filing of the tentative map.

Mayor Patterson discussed how that would provide the City with a timeframe, BUSD would be involved at the table during the specific planning process and the EIR, they could refine the agreement with Seeno, and then it would come back to the City to provide that legislative protection. In the event there can't be an agreement, that would inform the City Council.

Council Member Hughes discussed the need for the City to be more active in the discussions with the District regarding the MOU. Not actually lead the discussion, but be a part of the discussions.

Mayor Patterson discussed the need to make sure that BUSD was on the oversight committee.

Vice Mayor Campbell discussed a possible conflict with having BUSD on the committee then potentially be voting on an agreement with the developer. They could be on the committee as a non-voting member. Ms. McLaughlin will check on whether there is a conflict of interest or not.

Council Member Ioakimedes discussed his desire for Council to obtain ultimate control and review of whatever is happening. The District could enter into an agreement with any entity. How that is incorporated into the City's overall process is Council's purview. He did not see a conflict of interest. The City would not be making its decision contingent on the agreement with BUSD and the developer. The City would incorporate it, accept, or modify it any way it wants to. The City would not be restricted in any way by the agreement between BUSD and the developer. That preserves the Council's legislative authority.

Janice Adams, Superintendent, BUSD, asked what the term 'honor' implied. Ms. McLaughlin stated that if the District could come up with an agreement that was reasonable, and the developer and BUSD agreed to, it would be all well and good, but if things went astray and the parties are not able to agree, the City could still choose to go forward with the project if it felt the commitment with developer was still being made. That is because Council chose to say that the CEQA mitigations, the project approval

conditions, and incorporate enough conditions that would honor or protect the residents, staff members, surrounding neighbors, the school children, and the teachers.

Mayor Patterson discussed her sense of the public process; things will be much more transparent. It is a give and take process. The desire is not to have impacts on the health and safety of the school, neighborhoods, and community. If BUSD and the developer can't reach an agreement, they would inform Council. If there is a reason they can't reach the agreement, maybe there is something the City could do to help the decision. The District has to have its own separate agreement. It is about having faith in the process.

Trustee Dean stated that the term 'honor' gave her room for pause. It leaves too much open for discussion later on. The concept of bringing it forward for adoption within its own document is the right one. She suggested the City just leave out the word 'honor.' She clarified that this was not an official Board decision. She was speaking on her own. She suggested there be a finding indicating that BUSD is in negotiations for an agreement.

Council Member Schwartzman discussed what would happen if the language went in and the parties couldn't come to an agreement, but the mitigation measures are met. Council would then have to decide if the mitigations are met. As long as there is flexibility, it makes sense.

Council Member Hughes discussed the need to have the flexibility to make a decision to move forward or not.

Trustee Dean discussed the amount of time, money, resources BUSD has put into this issue.

Lewis Parsons, Discovery Builders – Mr. Parsons stated that they (Discovery Builders) had not heard anything they object to. Regarding the community advisory panel, the City could agendize the makeup of the CAP to a separate meeting. There is further discussion that needs to be had on the composition of the CAP. That might help this move along. They could live with the language suggested by Ms. McLaughlin

Ms. McLaughlin clarified the language: 'It is the City's expectation that the developer and BUSD will enter into an agreement to address the project's impacts on Semple School prior to the filing of a tentative map. The Council shall review any agreement and incorporate appropriate agreement terms as conditions of approval.'

Mayor Patterson discussed the suggestion that the City could rescind, but wait on approval of the resolution until the City gets the details back, or does Council have to continue and take a vote on 3/3/09? Ms. McLaughlin stated that legally speaking it could, but if the City could just work out the details, it should just do it. The longer this goes on, the further the City's position is being jeopardized, in case somebody decides to sue the City.

Council Member Schwartzman discussed putting the language into the ‘whereas.’

Ms. McLaughlin stated that the language could be in both places. In the whereas, it could be that it is expected that they are going to enter into an agreement, and then in the ‘resolved’ section we could incorporate any appropriate agreement terms into the project approval conditions.

Mayor Patterson stated that she thought she heard that the whereas should indicate for the purpose, and that is because of the health issues with the school and the employees. Then, the specific performance would be in the ‘therefore’ part.

Ms. McLaughlin stated that worked too. If Council does that ‘whereas’, she suggested they add the residents, so it would read ‘the school, staff, residents, and children.’

Mayor Patterson discussed the extent of the advisory/oversight committee. She saw it as an oversight committee.

Council and Staff discussed having the committee start later, putting the committee in place sooner than later, having it along the same lines as the General Plan Oversight Committee, informing the committee early but not engaging it until after the visioning process, having citizens on the committee, not having Council Members on the committee, the committee as an advisory and oversight of the project, the committee’s work not starting until after the City has a specific plan, having the committee completely made of up citizens, and having each Council Member recommend one member of the community to sit on the committee.

Mayor Patterson discussed how she has not been happy with the process from the beginning. She discussed the input from the community. The City needs to have the oversight committee now, not later. It could be done quickly. She discussed the problems with the project manager with Sky Valley.

Council and Staff discussed having the committee in place and active after the specific plan process, having the committee involved in developing the specific plan, bringing the committee in right from the beginning, the oversight committee being about public outreach, the committee would have the oversight, interviewing, public outreach, and be a checkpoint for oversight, enthusiasm for having oversight from the very beginning, the specific plan being separate but overseen by the committee.

Council and Staff discussed the desire to make a decision on this tonight, establishing the CAP now, but not being formally engaged until after the specific plan, there being plenty of time for the community to engage in the process, concern that engaging the committee too early would slow down the process.

Council and Staff discussed the issue of choosing the CAP and having them participate in the selection of the consultant in the early phase, they would be formally gathered, but

there would have to be assurances that their participation would be limited as individuals during the visioning process.

Council and Staff discussed Staff's idea as to when it would formally engage the CAP. Staff stated that it would not put the committee in place to hire the project manager. Once that person is in place, there is no real difference. Staff would have the project manager get the RFP in place, then set up the committee. When the vesting tentative map is approved, you don't need a project manager any more.

Council Member Schwartzman discussed role of the project manager. He would like the committee in place after the vesting tentative map. He was willing to have it start earlier. He would go along with having it involved after the project manager is hired.

Mayor Patterson suggested giving direction to Staff about what the intent was to add this into the resolution – the outline that Mr. Knox gave. As for the committee, it has been suggested that each Council Member would appoint someone, there could be a liaison appointment by EDB, Planning Commission, Traffic, Pedestrian and Bicycle Safety Committees, then, the three organized community groups, which are BUSD, Benicia First, and Green Gateway.

Council and Staff discussed having Staff write the RFP for a project manager, the project manager decision would come directly from Council (unless Council wants Staff to do an interview panel), the project manager is then on line and the CAP would be appointed (11 members was more than enough), they work together to write the scope of work (the work plan) for the specific plan/EIR team, that team goes through a panel interview process with the CAP and they make a recommendation to Council, Council then approves the hiring of the specific plan/EIR team, then they are online and part of what they decide in the work scope for Council to approve is the decision points at which Council will be looking at recommendations or advice from the CAP. The scope of work is put together by the people appointed with the project manager. Then it becomes the work scope for the plan and it carries within it the decision points, deliverables, and the products that Council needs to review. When Council gets to the EIR there is a process already in place for CEQA that is going to be self-evident. Council will still get advice and recommendations from the CAP and the Planning Commission. The project manager would be working until the vesting tentative map is in place, then a switch is made to the project manager that was the subject of the conditions of approval, which is somebody who works for Mr. Schiada. Once the vesting tentative map is approved, the new project manager will be an engineer who is making sure all the conditions of approval and mitigation measures are being met and carried out.

Vice Mayor Campbell suggested having a member from BIPA and the Chamber of Commerce on the CAP as well.

Staff suggested the project manager needed to fit in with existing Staff. They would report to someone on Staff to make sure that, on a daily basis, there is a reporting mechanism as an oversight. There also has to be proper coordination.

Staff discussed problems with having too many members on the CAP. It tends to get unruly.

Council and Staff discussed the composition of the committee, limiting it to 7 people (5 Council appointments and 2 others), not having the CAP involved in the development of the RFP for the project, and limiting the CAP to 9 or 11 members.

Mayor Patterson stated that she would like to work off the resolution on page IX-D-12. It was suggested that Council add some 'whereas' to clarify how the City wound up here. She suggested adding paragraph referencing 'because of denial...' Ms. McLaughlin stated that there was a question on referencing the developers letters and a 'whereas' on the rejection of the project and the reasons for that. Then there was a 'whereas' about the health and safety of the Semple School students, staff, etc. getting us to an agreement with the developer and BUSD, and City.

Council Member Ioakimedes stated that the critical language he thought was missing was that the City has gotten to this point because it is accepting conditions that the applicant has proposed in their letter. It is more than just incorporating the letter. There is probably a legal reason the City would want to structure it that way. Ms. McLaughlin stated that could be done.

Ms. McLaughlin stated that on the health risk assessment the question is does Council want it broader than within 200 ft. at Semple School. Mayor Patterson stated that 200 ft. was definitely not acceptable. Health risk assessment is a protocol that is provided by State law. She suggested deleting '200 ft' and have it say 'staff and surrounding residents or neighborhood.' Council and Staff discussed what defined 'surrounding area.' Mr. Goetz had suggested 200 ft. on either side of East Second Street. Council agreed to 200 ft. on either side – Military East to Rose Dr. as the surrounding area.

Council and Staff discussed adding 'minimize the need for additional road capacity' to 4(e), and making sure that was part of the specific plan process.

Council and Staff discussed #10 - science based consensus or assurances. Council decided that 'consensuses made more sense.

Council Member Ioakimedes discussed the need for there to be language as to why the City is where it is with this. There was a concern that the standards of regional air quality are not the same as standards that would be developed from a local community health perspective, there should be language that would specifically deal with air quality issues specific to Benicia.

Council Member Schwartzman discussed concerns about all the extra 'whereas' being put in the resolution. He was afraid that the more strings Council puts into this and the more it restricts what can go there, that it is not impossible that this could be economically

infeasible to put together. The 'will' should go back to 'could.' Council Member Ioakimedes clarified that it was 'will' not 'must.'

Council Member Schwartzman discussed Mr. Straw's email about the standards and criteria by which development would proceed. He thought it was supposed to be lifting specific language out of the code. This seems to be, if you look at the underlines, its adding 'including but not limited to transportation...' Could that be added? Ms. McLaughlin stated that was correct. This was originally drafted as a quote from the government code section talking about specific plans. The underlined language is not actually in the government code, so we should probably remove the quotes and structure that a little better if Council wants that language. But, if Council wants to just go with what the state code says that underlined language is extra and could perhaps be put somewhere else. Council Member Schwartzman stated that he thought the language was okay, but was not sure where it should go.

Mayor Patterson suggested writing this indicating the language was from the statute. Where the language was not from the statute, it should be put in brackets, indicating that the City is inserting that language. Council Member Schwartzman indicated that worked.

Council Member Schwartzman stated that the new #4 – 'green clean tech emphasis' seemed to be redundant. He suggested striking after goals and visions of our general plan, and leave it with a period. He discussed the issue of minimizing the need for increasing road capacity. That does not need to be put in there. He discussed #11 – PLA. He would like to have prevailing wage in there. Council discussed whether to change the language.

Council Member Schwartzman discussed the new #13. If the City gets to 18 months and the oversight committee is becoming cumbersome and hold the City back, it could be a situation where the City is holding up the process. If they consider it to not be in good faith, they should have the opportunity not to continue. He was okay with the language the way it is. As far as he was concerned, the new #14 could be taken out entirely.

Vice Mayor Campbell stated that he did not have any suggested changes.

Council Member Hughes discussed the 18-month timeline. There needs to be a sense of urgency on both parties to meet or exceed the 18 months. He agreed with removing item I. Ms. McLaughlin clarified that Council was just adding the sentence about minimizing the need for additional road capacity. Council Member suggested putting a period after 'also help reduce the greenhouse gas effects' on #11. He was okay with adding prevailing wage. He was okay with keeping #14 in there.

Mayor Patterson confirmed that Council Member Schwartzman agreed to put a period after 'also help reduce greenhouse gas effects' and adding the reference to prevailing wage.

Council Member Schwartzman and Mayor Patterson discussed the roadway issue. Mayor Patterson stated that her understanding was that it read 'transportation traffic solutions designed to avoid and/or minimize significant air, noise, traffic impacts, and reduce

vehicle miles traveled to achieve the AB 32 and City of Benicia Climate Action Plan greenhouse gas emission targets.’

Council Member Ioakimedes stated that he was okay with it as long as the language about expanding the health risk assessment was in there. Mayor Patterson confirmed it was.

Ms. McLaughlin asked for clarification on where the language should go regarding specific air quality data from Benicia. Mr. Knox stated that he understood that it should go under 5(a). Mayor Patterson stated that earlier that the new paragraph #4 was important, but it should be restated further down. It did not need to be a verbatim restatement. It just has to capture the sense of it.

Mayor Patterson asked if there could be some sort of recognition in terms of the attorney fees that have been spent by BUSD. They are going to be spending additional limited resources to participate in this. She asked if there could be a commitment by Mr. Seeno about reasonable consideration of the fees that would be paid.

Mr. Albert Seeno stated that he spoke with BUSD and the District knows what the number is. He offered the amount 3 or 4 times. He did not think it was appropriate to discuss the amount publicly. He offered to write the amount down and show it to BUSD if they wanted. Mayor Patterson asked if Seeno could help with the District’s actual costs. Mr. Seeno stated that he was willing to pay a portion. He offered 1/5 of the number asked by the District. Mayor Patterson stated that it was her understanding that there was one set of numbers dealing with the project and the potential impacts, and another set of numbers that deals with the actual costs of the attorneys. The request was could Seeno help the District with its actual costs. Mayor Patterson stated that Seeno had come so far in this process. She was going to take a leap of faith that she ordinarily never takes and say that Seeno’s intent was to satisfy the cost needs of BUSD and what it has already spent on attorneys, and she hoped it would not come back in a negative way. Mr. Seeno stated that he would not lie. It would come back. The District was asking for \$100,000. He can’t and won’t pay that. The District then asked for \$50,000. He offered to pay 1/5 of \$50,000, which was \$10,000. No more. He did not want to leave here with that being unclear.

Council Member Hughes suggested there be language that there is a recognition by the applicant that BUSD incurred legal costs associated with the development and the issues related to it, and that they will sit down and negotiate a fair price, with the understanding there is a gap in what the applicant and BUSD think is fair. That will not happen tonight. They need to work out the details.

Mayor Patterson suggested adding to paragraph #10, page 14 that the settlement of BUSD’s costs would be negotiated between the two parties. Ms. McLaughlin suggested adding ‘project impacts can include the reasonable cost of attorneys’ to #10 – and ‘Council shall review any agreement and incorporate appropriate agreement terms as conditions of approval.’

Council Member Schwartzman asked for clarification on the changes to #10. Ms. McLaughlin read: 'It is the City's expectation that the developer and BUSD will enter into an agreement to address the project's impacts on Robert Semple School prior to the filing of a tentative map. Project impacts include costs for reasonable attorney's fees. The City Council shall review any agreement and incorporate appropriate agreement terms as conditions of approval.' The whereas that Council agreed to was 'whereas the health and safety of Semple School students, staff, and neighbors is important to protect from the project impacts and the developer, BUSD, and the City have been and continue to attempt to mitigate these impacts through agreements or conditions of approval.'

Mayor Patterson stated that because there had been numerous changes to the resolution, she would like to entertain a motion based on this resolution, but the final approval of the resolution would come back to Council on 3/3.

Ms. McLaughlin suggested she read the general parameters of where the resolution was, and Council could agree to it and put it into the resolution.

Ms. McLaughlin stated that she was going off of the redlined version on pages IX-D-12 through IX-D-15. Council was going to add three new whereas'. One of the whereas' is going to reference the developers letters and include language that the City was here at this point rescinding the decision because it was accepting what the developer was proposing and committing to. There would be a brief whereas stating the reasons the project was rejected (that would go before the whereas with the developers letters). Then there would be the whereas with the language she just read 'the health and safety of Semple students, staff, and neighbors is important to protect from project impacts and the developer, BUSD, and the City have been and continue to attempt to mitigate these impacts through agreements and/or conditions of approval.' Then, going back to page IX-D-12, paragraph 3 – she will bracket the language that is currently underlined to show that it is not part of the language being quoted. Moving on to IX-D-14 item #4, she will end the sentence after 'our general plan' and delete the emphasis on green tech clean tech industry – the redundant part. On item 5(a) the health risk assessment- it will be consistent with State law to address the potential health risks to Semple School children, staff, and surrounding residents within 200 ft. of either side of East Second from Military East to Rose Drive. The air quality issues will be based upon data from Benicia. She will reinsert item (d) as proposed 'green/clean tech emphasis including a recruitment program. She will re-letter those sections appropriately. There were no changes to item I. On item 6 – the establishment of a voluntary citizens panel – there will be no more than 11 members, 5 of which will be appointed by Council with the intent that the committee will be representative of the Chamber of Commerce, Benicia First, Green Gateway, BIPA, BUSD, EDB, Planning Commission, and the Traffic, Pedestrian and Bicycle Safety Committee. The CAP is going to help review the specific plan, EIR, and the development agreement, and will help put the RFP together with Staff and the project manager.

Mr. Knox asked if it was possible to sever the development agreement from the specific plan EIR. Council confirmed that was acceptable.

Ms. McLaughlin continued with the changes to the resolution: on page IX-D-14, item #10 will read ‘the recognition that BUSD seeks science based consensus that the Semple Elementary children, staff, and campus are not adversely affected by traffic, air pollution, and noise impacts generated by the project, and that such assurances prior to project approval are also in the City’s best interest to protect the community from adverse environmental effects.’ Adding the new language here ‘It is the City’s expectation that the developer and BUSD will enter into an agreement to address the project impacts on Semple School prior to the filing of a tentative map. These impacts include the reasonable cost of an attorney for BUSD. The City Council shall review any agreement and incorporate appropriate agreement terms as conditions of approval.

Council Member Schwartzman asked if he could add one thing. He suggested the recognition that local labor receiving prevailing wages should be given the full opportunity. Then the rest of it and a period after greenhouse gas effects.

Ms. McLaughlin suggested on item #11 - ‘local labor should receive prevailing wages, and be given full opportunity to ...’ that paragraph will end after greenhouse gas effects. On paragraph #12, the project manager, it will discuss that the project manager will be done by an RFP by Staff and selected by the City Council at a City Council meeting. Also, the project manager will transition after the vesting tentative map and then switch over more towards an engineering type project manager to deal with the project implementation and monitoring. That is it except for paragraph #14 where Council took out the ‘award winning.’

Mayor Patterson asked for a clarification on whether the oversight committee would deal with the development agreement. Staff stated that was the purview of the Council. It would not be helpful to the specific plan EIR to force them to put someone on their team who is an expert in development agreements. That should run through Council and the City Attorney’s office.

Ms. McLaughlin stated that what she was talking about is that the CAP would be looking at the scope of the specific plan EIR and the development agreement. She would think that Council would want them to look at the development agreement. Mayor Patterson agreed. Staff clarified that they thought she meant that they would be responsible for choosing the team. Mayor Patterson stated that she would think that one would want them to look at the development agreement. Ms. McLaughlin stated that she would add that back in.

Mayor Patterson asked Mr. Seeno about what Council and Staff just went over. Mr. Seeno stated, “We agree.”

Staff discussed whether it was required to have the developers concurrence of the changes in writing or verbally. Ms. McLaughlin clarified that the verbal concurrence of the developer should be sufficient.

Mayor Patterson publicly acknowledged her respect for the developer's willingness to work with the process and the City of Benicia.

Vice Mayor Campbell stated that Council should not get too carried away with how happy it is until the specific plan proves the project is worth doing.

RESOLUTION 09-19 - A RESOLUTION RECONSIDERING THE DECISION ON THE BENICIA BUSINESS PARK PROJECT AND RESCINDING RESOLUTION NO. 08-116 DENYING THE PROJECT

On motion of Council Member Ioakimedes, seconded by Council Member Schwartzman, the above Resolution was adopted as amended, on roll call by the following vote:

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Noes: None

Campaign Disclosure Ordinance:

Ms. McLaughlin asked if Council could hear Mr. Churchwell (who had been waiting for a very long time) speak on the Campaign Disclosure Ordinance.

Council decided that due to the late hour, it would be better to hear Mr. Churchwell speak at a future Council meeting. Ms. McLaughlin requested Council to direct that this item be placed first on the Action Items on the next agenda. Mayor Patterson concurred with that direction.

This item was continued to the next Council meeting.

INFORMATIONAL ITEMS:

Reports from City Manager:

Council Member Committee Reports:

1. Mayor's Committee Meeting - (Mayor Patterson) - Next Meeting Date: February 18, 2009
2. Association of Bay Area Governments (ABAG) - (Mayor Patterson & Vice Mayor Campbell) - Next Meeting Date: April 23, 2009 – Spring General Assembly
3. Finance, Audit & Budget Committee - (Vice Mayor Campbell & Council Member Schwartzman) - Next Meeting Date: March 6, 2009
4. League of California Cities - (Mayor Patterson & Council Member Schwartzman) - Next Meeting Date: February 19, 2009
5. School Liaison Committee - (Council Members Ioakimedes & Hughes) - Next Meeting Date: March 12, 2009
6. Sky Valley Open Space Committee - (Vice Mayor Campbell & Council Member Ioakimedes) - Next Meeting Date: May 6, 2009
7. Solano EDC Board of Directors - (Mayor Patterson & Council Member Ioakimedes) - Next Meeting Date: March 26, 2009

8. Solano Transportation Authority (STA) - (Mayor Patterson & Council Member Schwartzman) - Next Meeting Date: March 11, 2009
9. Solano Water Authority/Solano County Water Agency and Delta Committee - (Mayor Patterson & Vice Mayor Campbell) - Next Meeting Date: March 12, 2009
10. Traffic, Pedestrian and Bicycle Safety Committee - (Vice Mayor Campbell & Council Member Hughes) - Next Meeting Date: April 16, 2009
11. Tri-City and County Regional Parks and Open Space - (Vice Mayor Campbell & Council Member Hughes) - Next Meeting Dates: Citizen's Advisory Committee - February 18, 2009 and Governing Board – March 9, 2009
12. Valero Community Advisory Panel (CAP) - (Council Member Hughes) - Next Meeting Date: To be determined.
13. Youth Action Task Force - (Council Members Ioakimedes & Schwartzman) - Next Meeting Date: February 25, 2009
14. ABAG/CAL FED Task Force/Bay Area Water Forum - (Mayor Patterson) - Next Meeting Date: February 23, 2009

COMMENTS FROM COUNCIL MEMBERS:

None

ADJOURNMENT:

Mayor Patterson adjourned the meeting at 11:44 p.m.

Lisa Wolfe, City Clerk